

What do we need to know?

Levels of Responsibility

No longer does the responsibility for Safety in the workplace, just fall on the 'Employer'. The HSAW Act shares various duties on Persons Conducting a Business or Undertaking (**PCBU**), Officers, Workers, and Others (including Contractors and Volunteers).

In essence, this means no one can 'opt out' of Health and Safety, put their hands in the air and say "it's not my problem". Safety is everyone's responsibility.

The primary duty to ensure Health and Safety sits with the PCBU – as the person or business in the best position to control risks in the workplace. The PCBU is responsible for the Health and Safety of anyone working for them (including Contractors, Volunteer Workers and Employees) as well as those within the vicinity of the work they are carrying out or by using the products and services they provide (including Customers, Visitors and the Public).

The PCBU's specific obligations, so far as is reasonably practicable:

- providing and maintaining a work environment, plant and systems of work that are without risks to health and safety
- ensuring the safe use, handling and storage of plant, structures and substances
- providing adequate facilities at work for the welfare of workers, including ensuring access to those facilities
- providing information, training, instruction or supervision necessary to protect workers and others from risks to their health and safety
- monitoring the health of workers and the conditions at the workplace for the purpose of preventing illness or injury.

A PCBU will usually be a company; however a PCBU can be an individual in the case of a Sole-Trader. WorkSafe NZ gives the following examples as PCBU:

- A retail business
- A wholesale business
- A manufacturing business
- An import business
- An owner-driver of their own courier business
- A fast food franchisor and the operator of the fast food outlet (the franchisee)
- A self-employed person operating their own business
- A government department
- A local council



- A school
- A partnership
- A building company, including principal contractors and sub-contractors
- A not-for-profit organisation that employs admin staff

Officers

All PCBU's will have within them individuals who hold a senior governance role in the organisation, those that exercise significant influence over the management and decision making in that business. These individuals are deemed to be 'Officers' under the HSAW Act, and because of the role they play, they have to exercise due diligence to ensure that the PCBU complies with its duties.

Examples of Officers:

- Company Directors
- Partners
- Board Members
- CEO

Essentially, it is not enough to manage a company, sit on a Board of Directors or make decisions that affect those that work for you or within the PCBU – without taking safety seriously and without making sure that you are asking the questions that allow you to fully understand what is happening from the ground floor up. Understanding the hazards and risks within the operations of the PCBU, assessing accidents and near misses, ensuring the PCBU has the resources and acts accordingly are all examples of due diligence.

Hearing no news and thinking that is good news...that is not an option anymore.

Workers

The HSAW Act also takes into consideration Workers and the responsibilities they have to themselves and others in the workplace – this includes taking reasonable care of their own safety, ensuring their acts or omissions don't harm others, complying and cooperating with the policies and procedures of the PCBU.

In order for the PCBU to ensure Workers are on board and taking safety seriously, the HSAW Act focuses on Worker Engagement – these are practices such as electing Health and Safety Reps, introducing Health and Safety Committees, and having regular Health and Safety meetings.



While there are specific requirements for Worker Engagement for PCBUs with more than 20 Employees and those in high risk sectors – the main idea is that Health and Safety should be a frequent topic of conversation between everyone at all levels of the business.

This is the key to ensuring PCBU's and Officers are hearing what is going on at an operational level of the business, and for Workers to ensure they fully understand the policies and procedures they are working with.

Volunteers

Under the HSAW Act, there are clear definitions of what categories Volunteers fall into. Firstly let's look at the responsibilities of a Volunteer Organisation and then Volunteers themselves.

Volunteer Organisations - A Volunteer organisation that has no paid Employees (only Volunteers) is not a PCBU, they are deemed to be a 'Volunteer Association' – therefore the Association and the Volunteers that work under it are not covered by the Act.

If the Volunteer Organisation has at least one paid Employee – then the Organisation is deemed to be a PCBU and has the primary duty under the Act.

Volunteers working for a PCBU - The Act covers Volunteers that work for a PCBU regularly, on an ongoing basis and who are integral to the PCBU's operations. In summary, if you are a Volunteer Worker – your duties are the same as a Worker. If you are a PCBU that has a Volunteer Worker working for you – your duties are the same as if they were a Worker.

The act doesn't cover Volunteers that work on a casual basis or the following activities (Casual Volunteers):

- Participation in a fundraising activity
- Assistance with sports or recreation for an educational institute, sports or recreation club
- Assistance with activities for an educational institution outside the premises of the educational institution.
- Providing care for another person in the volunteer's home.

However, if you are a PCBU with a Casual Volunteer working for you, your duties are the same as those towards the likes of Customers or Visitors.

